



MASSACHUSETTS DEPARTMENT OF REVENUE PERSONAL INCOME TAX

FILING STATUS: DIVORCED
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FACTS: Able, a calendar year taxpayer, obtained a judgment of divorce in November, 1987. The judgment did not become final until February, 1988.

ISSUE: What is Able's filing status for the 1987 tax year?

DISCUSSION: For filing purposes, a taxpayer's marital status is generally determined at the close of the taxpayer's taxable year, G.L. c. 62, § 1(g), and an individual is considered married unless legally separated from his or her spouse under a decree [judgment] of divorce. *Id.*

In Massachusetts, judgments of divorce are initially issued as judgments nisi, temporary in nature, which generally become absolute after 90 days unless the court orders otherwise. G.L. c. 208, § 21.

While the judgment nisi is a judgment of divorce, that judgment does not change the marital status of the parties, *Sheffer v. Sheffer*, 316 Mass. 575 (1944), and the marriage remains in force for 90 days until the judgment nisi becomes absolute. *Ross v. Ross*, 385 Mass. 30 (1982). Consequently, the "decree of divorce" referred to in G.L. c. 62, § 1(g) is the absolute judgment, not the judgment nisi.

Since the marital (and tax) status of a divorced or divorcing individual depends on the nature of the judgment of divorce in effect at the close of the tax year, if the judgment nisi is in effect at that time, the taxpayer is married and must file either jointly or as married filing separately. If the judgment nisi has then become absolute, the taxpayer's filing status is "single."

DIRECTIVE: At the close of Able's tax year the judgment nisi entered in his case had not yet become absolute. Able was, therefore, married and could file either jointly or as married filing separately. In order to file jointly, however, Able's spouse must also sign the return. If the spouse cannot be located or refuses to sign a joint return, Able must file as married filing separately.

REFERENCE: G.L. c. 62, § 1(g); G.L. c. 208, § 21; *Sheffer v. Sheffer*, 316 Mass. 575 (1944); *Ross v. Ross*, 385 Mass. 30 (1982).

March 15, 1989

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Stephen W. Kidder
Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.

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